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Spirit of Service

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Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW B-204
Washington, DC 20554

RE: *In the Matter of Developing a Unified Intercarrier Compensation Regime;* CC Docket No. 01-92

Dear Ms. Dortch:

In early February, representatives of Qwest Communications International Inc. ("Qwest") met with commissioner Legal Advisors and Federal Communications Commission ("Commission") staff to discuss phantom traffic.[1] Qwest hereby submits this *ex parte* to address certain questions that arose during those earlier *ex parte* meetings and to address certain issues raised by subsequent *ex parte* filings of other parties.

Summary

In the first section, Qwest offers further detail of the legal analysis underlying its positions with respect to agreements. Specifically, Qwest clarifies that it is not asking for a change in law but rather a clarification of existing law in this area. Additionally, Qwest explains that there are four distinct regulatory constructs through which carriers exchange traffic --

agreements under Section 251(b) and (c) of the Act, contracts under Section 259, tariffs and agreements not covered by the three preceding categories. As the latter category has not been as well scrutinized, historically, as the first two, Qwest expounds upon that category below.

In the second section, Qwest identifies what it believes to be the most relevant legal authority regarding the positions on transiting contained in Qwest's recent *ex parte* presentations. The treatment of agreements for transiting services is covered in the first section. In the second section, Qwest demonstrates how the Act, relevant case law and the Commission's *Texcom* and *Virginia Arbitration* decisions all make unequivocally clear the three other key legal principles underlying Qwest's positions on transiting. These are: (1) that originating carriers are solely responsible for transiting costs; (2) that carriers should be free to negotiate market-based arrangements for transiting services; and (3) that a carrier obligation to provide transiting can only be founded upon the requirements of Section 201 that common carriers provide transiting when directed by the Commission under the circumstances described in Section 201.

In the third section, Qwest explains why the best solution to the local number portability ("LNP")-query issue addressed in its *ex parte* presentations (and those of other parties) is not simply to allow for the end office to do the query and charge the N-1 carrier. In that discussion, Qwest demonstrates why this question frames the issue incorrectly because it ignores the fact that existing law requires the N-1 carrier to perform this query and ignores the fact that significant costs and inefficiencies are suffered by the carrier that performs the "default" end office LNP database query. Qwest also demonstrates that industry trends debunk any notion that

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[1] *See* Letters from Melissa E. Newman, Qwest to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Feb. 3, 2006); Letter from Melissa E. Newman, Qwest to Marlene H. Dortch, FCC and Letter

porting and pooling are so infrequent that it is somehow unfair to impose the query obligation on the interexchange carrier ("IXC") or originating carrier at the beginning of the call flow.

In the fourth section, Qwest revises its suggestion in its prior *ex parte* presentation that the action requested by the US Telecom Association ("US Telecom") proposal and supported by Qwest regarding LNP queries would require a rule change. US Telecom has clarified that it is not seeking a rule change but merely a clarification by the Commission that the N-1 carrier, which is *usually* the originating local exchange carrier ("LEC") for local traffic and the originating IXC for non-local traffic, is obligated to perform the required query. Qwest supports this request for clarification.

In the fifth section, Qwest describes how the LERG ("Local Exchange Routing Guide") controls the routing of a local call versus an interexchange call.

In the sixth section, Qwest states its opposition to certain comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") suggesting that carriers must use a Centralized Equal Access ("CEA") architecture for delivery of traffic to end offices that subtend CEA tandems.

Finally, in the seventh and last section, Qwest responds to a question regarding how many incumbent LECs ("ILECs") in Qwest's region have no out-of-band signaling capability.

<u>Qwest's Further Responses</u>

First, in its earlier *ex parte* meetings, Qwest was asked to further detail the legal analysis underlying its positions with respect to agreements and, specifically, to clarify whether Qwest is asking for a change in law or simply a clarification of existing law in this area. Qwest believes

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from Lynn Starr, Qwest to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Feb. 6, 2006).

that the Commission should clarify some basic legal positions, but that the proper regulatory structure is already in place and does not need to be modified.

In its *ex parte* presentations, Qwest stated that it agreed with U S Telecom that the Commission should clarify that all carriers exchanging local traffic must do so pursuant to contract.[2] Qwest stated that some such agreements may be subject to the Section 252 negotiation/arbitration process, opt-in features, etc. (*e.g.*, those arising under Section 251(b) and (c)), including compensation for transport and termination of traffic) while others may be governed by Sections 251(a) and/or 201(a).[3] This applies whether the carriers serving the local called and calling parties are interconnected directly or indirectly. Qwest further stated that any carrier serving end-user customers placing or receiving local calls (*e.g.*, ILECs, competitive local exchange carriers ("CLECs") and commercial mobile radio service ("CMRS") carriers) has the right to demand such interconnection negotiations with other originating and terminating carriers, respectively, as a condition of exchanging traffic with them.[4]

These positions reflect well-established law. To begin with, intercarrier contracts are treated quite differently under the 1996 Act than are common carrier services offered to the public, and have been treated differently since the inception of the 1934 Act itself. In fact, the concept of tariffed services being used to govern inter-carrier contracts is relatively new, and intercarrier contracts for interconnection and exchange of traffic pre-date the 1996 Act. The

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[2] *See*, *e.g.*, Letter from Melissa E. Newman, Qwest to Marlene H. Dortch, FCC, Attachment, *Phantom Traffic, Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92* (Feb. 2, 2006), at 4 of 7.

[3] *Id.*

[4] *Id.*

tariff regime for interexchange access came into being to reflect the emergence of competitive long distance carriers and the divestiture of the Bell System.[5] Later, the unique contracting system for exchange of local traffic and the use of ILEC facilities and services by CLECs created by the 1996 Telecommunications Act came into being. In the case of the arrangement of business and technical relationships between carriers, it is important to remember that except where the Commission has specifically acted otherwise (*e.g.*, carrier access tariffs) the basic assumption has always been that carriers would order their own dealings among themselves by contract, while public offerings to end users (*i.e.*, non-carriers) would be via tariff.

In this context, carriers interconnect or otherwise exchange traffic with each other in one of four fashions:

- Agreements for services and facilities covered by Section 251(b) and (c) of the Act, which are governed by the procedures of Section 252.
- Agreements for infrastructure sharing under Section 259 which are governed by that section.
- The tariffed provisioning of services which the Commission has, by rule, required to be offered pursuant to tariff, such as access services provided to carriers by ILECs.
- Agreements for services and facilities not covered by the three preceding bullets.

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[5] *See In the Matter of MTS and WATS Market Structure*, CC Docket No. 78-72, Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, 81 FCC 2d 177, 183 ¶ 24 (1980); *see also generally*, *In the Matter of MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983), Memorandum Opinion and Order, 97 FCC 2d 682 (1983), Memorandum Opinion and Order, 97 FCC 2d 834 (1984).

The fourth type of arrangement has received considerably less attention in recent years than the other three. The basic regulatory structure that governs intercarrier contracts (*i.e.*, contracts dealing with the exchange of traffic) that are not covered by Section 251(b) or (c) or Section 259 of the Act is essentially as follows:

- They are contracts that are subject to an exclusively federal (Commission) jurisdiction.
- They are contracts that may need to be filed with the Commission. Not all carrier contracts are subject to Section 211(a) and the Commission may, by rule, eliminate any such filing requirement (which it has done in the case of contracts between non-dominant carriers).[6]
- They are contracts that are governed by the general rules concerning unreasonable discrimination, but any such discrimination is judged under a contract, not a tariff, standard. This means that reasonable business differences can be reflected in differing

[6] The appropriate filing treatment of this fourth category of contracts is still developing. By way of example, Qwest has historically combined non-Section 251 intercarrier provisions relating to transiting with contractual obligations addressing 251(b) and (c) services into a single contract that was filed with state commissions. This is consistent with the Act. Such contracts are currently filed with the state commissions in compliance with Section 252(a)(1) and (e). At the same time, it should be noted that the scope of Section 252 has not been uniformly applied throughout Qwest's region. Eleven of Qwest's 14 in-region states have limited the Section 252 filing requirement to Section 251 services. Three have broadened it to include any network element as defined under 47 U.S.C. Section 153. In any event, whether "combined" contracts such as those described above should also be filed with the Commission has never been addressed -- Qwest has assumed that any such filing remains voluntary at this time when the state filing requirements are met. On the other hand, stand-alone contracts for service not covered by Section 251(b) or (c), such as agreements for network elements that have been removed from the list of unbundled network elements under the Commission's "impairment test," would be handled differently. Those contracts would only be filed with the Commission as required under Section 211(a) unless the contracts pertained to services provided within the three states that would require filing under Section 252.

contract provisions in a manner that would not be permissible in a strict tariff situation. On the other hand, *if* a service were offered on a common carrier or tariff basis, the tariff discrimination standard would apply to it even though it is purchased primarily by carriers.

- The ability of a carrier to modify the price or other terms of such a contract is much more limited than is the case with a tariff -- the normal ability of a carrier to increase the price in a tariff is less available in the case of an intercarrier contract, which can be modified only under the "substantial cause" requirements of the Sierra-Mobile Doctrine.[7]
- The Commission does not have pre-approval authority over such contracts unless the Commission adopts a rule to that effect.
- Subject to the rule against unreasonable discrimination, carriers are not generally required to provide these types of contracts to any carrier in the absence of an express finding by the Commission under Section 201(a).
- Absent some particular governing law (*e.g.*, the statutory provisions governing the obligations of LECs to interconnect for the transport and termination of traffic), carriers do not have a common carrier obligation to provide services to other carriers on the same basis as they provide common carrier services to end users. For example, there is no statutory obligation and no common carrier obligation on the part of a LEC to provide transiting services between two other carriers.

[7] *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

In summary and as stated in Qwest's *ex parte* presentations, carriers originating and terminating local traffic are required to enter into agreements as a precondition of receiving service. The Commission's *T-Mobile Order* clarified the application of the Section 252 process to local traffic exchanged between ILECs and CMRS providers -- *i.e.*, it clarified that ILECs have the right to request interconnection from CMRS providers and to invoke the negotiation and arbitration procedures set forth in Section 252.[8] On the other hand, agreements between wireline local carriers or between wireline local carriers and CMRS providers involving transiting services are governed by Section 201(a), as described in greater detail below. Similarly, where the originating local carrier or CMRS provider interconnects with a terminating local carrier or CMRS provider by passing traffic through a transiting carrier, agreements between the terminating carrier and the originating carrier can be governed by Sections 251 and 252[9] or Section 201(a) depending upon the type of carrier and services involved. Agreements between the transit provider and the originating and/or the terminating carrier are governed by Section 201(a). These transiting agreements, even when not covered by Sections 251 and 252, can lawfully be made the subject of intercarrier contracts. Exchange access services provided to IXCs by ILECs must be offered pursuant to tariff. Similarly, jointly provided switched access --

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[8] *See In the Matter of Developing a Unified Intercarrier Compensation Regime; T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket No. 01-92, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855, 4860 ¶ 9 (2005) ("*T-Mobile Order*"), *petitions for reconsideration pending*, CC Docket No. 01-92 and *appeals pending sub nom. Ronan Telephone Company, et al. v. FCC*, Nos. 05-71995, *et al.* (9th Cir. *petition for review* filed Apr. 8, 2005; appeals stayed further, until May 24, 2006, pursuant to Order of Jan. 30, 2006).

[9] To the extent that these are Section 251(b) and (c) services.

when an ILEC provides tandem switching and transport between an IXC and another LEC -- is an arrangement that is governed by tariff, not by contract.

Consistent with the above, Qwest has stated that it agrees with US Telecom that the Commission should clarify[10] that all carriers exchanging local traffic have the right to expect that a carrier interconnecting either directly or indirectly with another carrier will enter into contractual agreements. As described above, Qwest does not agree that this need be accomplished by an extension of the *T-Mobile Order* to other types of carriers -- *i.e.*, to permit all carriers to invoke Section 252 procedures -- but rather through a clarification of the existing law. No new rules are needed to accomplish this clarification. In this regard, it should be clearly stated by the Commission that interconnection between carriers, whether indirect or direct, must be governed by principled legal standards. A carrier cannot refuse to enter into a contract with another carrier, yet at the same time expect to interconnect with that carrier and receive the benefits of such interconnection. While the *T-Mobile Order* was clearly correct, it should not have been necessary. Telecommunications carriers should no more expect to obtain interconnection rights in the absence of a proper legal relationship than the participants in any other marketplace. In short, if a carrier desires to be compensated for a service performed for another carrier, that carrier should ensure that the proper legal relationship is in place -- generally a contract -- whereby such compensation can be justified. Similarly, if a carrier expects to have services performed in connection with its traffic -- *e.g.*, to have traffic it hands to a transit service

[10] Qwest uses the word "clarify" here intentionally. Qwest believes that all carriers have long had this right/obligation but it would be helpful for the Commission to clarify this in order to avoid any potential confusion.

provider terminated by another, terminating carrier -- that first carrier must ensure that it has a proper legal relationship in place with the terminating carrier.

Second, Qwest was asked to identify what it believes to be the most relevant legal authority regarding the positions on transiting contained in its *ex parte* presentations. To some extent, this has already been answered in the first section, above. However, Qwest further expands upon this legal analysis as it applies to transiting as follows.

As described above, it is clear that transiting is a service that is subject to Sections 201 and 202. As such, transiting is not subject to the rules related to common carrier services offered to the public and can only be *mandated* after notice and a hearing as required under Section 201(a) of the Act and after it has been determined that certain rules concerning non-discrimination should apply to such contracts.[11] In other words, while there might be instances where an originating carrier could compel transiting services under the Act, those circumstances will be based on the specific facts mandated in the Act, not on a general common carrier obligation. Certainly the record in this proceeding does not support a general rule on transiting requiring that it be provided on a universal basis at regulated rates.

No other provision of the Act imposes an obligation upon carriers to provide transiting services between two other carriers. Section 251(a), on its face deals only with physical connections and imposes no such duty on carriers.[12] Similarly, Section 251(c)(2) plainly only speaks to the ILEC duty to provide interconnection for a local exchange carrier's network with *the ILEC's* network, not someone else's network. Neither of these provisions can reasonably be

[11] *See AT&T Corporation v. FCC*, 292 F.3d 808, 812-13 (D.C. Cir. 2002).

[12] *See AT&T v. FCC*, 317 F.3d 227, 234-35 (D.C. Cir. 2003).

read to obligate an ILEC or any other carrier to provide transiting between the networks of two other carriers. Indeed, as the Commission acknowledges in the *Further Notice* in this proceeding, "[t]he Commission's rules define the term 'interconnection' to mean 'the linking of two networks for the mutual exchange of traffic' and not 'the transport and termination of traffic.'"[13] As the Commission also acknowledges in the *Further Notice*, interpreting Section 251(a) to require transiting services might be read to suggest that, if two carriers choose to meet their obligations under Section 251(a) by interconnecting directly, each might arguably be required to pass traffic to other carriers through that direct connection -- an obviously absurd result.

At bottom, a carrier obligation to provide transiting can only be founded upon the requirements of Section 201 that common carriers provide transiting to other carriers when directed by the Commission under the circumstances described in Section 201. Specific rules regarding non-discrimination can be developed by the Commission, although a general non-discrimination obligation does attach, and the Commission could, upon a proper record, direct that transiting services be offered pursuant to tariff. Again, Qwest does not concede that a record justifying such extraordinary action could be compiled. In any event, at this point it is clear that there is no reason for contracts for transiting to be subject to any more burdensome rules than have historically applied to inter-carrier contracts prior to the 1996 Act.

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[13] *Further Notice*, 20 FCC Rcd 4685, 4741 ¶ 128 and note 369 (citing 47 C.F.R. § 51.5) (2005).

Significantly, it follows from the above authority that the Commission should allow the market to establish transiting service terms and rates[14] and that originating providers are solely liable for terminating compensation payments under Section 251(b)(5). Commission precedent on these specific points (which is binding on state regulators) is found in the Commission's *Texcom* and *Virginia Arbitration* decisions. In the *Texcom Order*, intraMTA calls originated on the networks of third-party carriers, transited the network of GTE North ("GTE") and terminated on the network of Answer Indiana, a CMRS provider. Answer Indiana filed a formal complaint with the Commission challenging GTE's attempt to charge it for the delivery of that traffic. In denying Answer Indiana's complaint, the Commission stated:

> Currently, our rules in this area follow the cost causation principle of allocating the cost of delivering traffic to the carriers responsible for the traffic, and ultimately their customers. Thus, through reciprocal compensation payments, the cost of delivering LEC-originated traffic is borne by the person responsible for those calls, the LEC's customers. As we stated in the *Local Competition Order*, "[t]he local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call"... In the case of third-party originated traffic, however, the only relationship between the [transiting carrier's] customers and the call is the fact that the call traverses the [transiting carrier's] network on its way to the terminating carrier. Where the LEC's customers do not generate the traffic at issue, those customers should not bear the cost of delivering that traffic from a CLEC's network to that of a CMRS carrier like Answer Indiana. Thus, the originating third-party carrier's customers pay for the cost of delivering their calls to the LEC, while the terminating CMRS carrier's customers pay for the cost of transporting that traffic from the LEC's network to their network.[15]

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[14] Those terms and rates should be deemed reasonable absent a showing to the contrary on a case-by-case basis.

[15] *Texcom, Inc. v. Bell Atlantic Corp.*, File No. EB-00-MD-14, Memorandum Opinion and Order, 16 FCC Rcd 21493, 21495 ¶ 6 (citations omitted).

The second most relevant authority is the Commission's *FCC Virginia Arbitration Order*, issued during a Commission arbitration of interconnection agreements between AT&T and Verizon in lieu of the Virginia commission, where the Commission's Wireline Competition Bureau (the "Bureau") addressed a similar issue.[16] In that case, AT&T contended that Verizon should treat transiting traffic from third-party carriers to AT&T as Verizon's own traffic. However, the Commission ruled that "when a third-party LEC places a call that terminates to [an AT&T customer], AT&T must bill the third-party LEC directly."[17] The Bureau also concluded in that case that "any duty Verizon may have under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC" and the Bureau expressly approved Verizon's charging of non-TELRIC rates for transiting.[18]

While these decisions dealt directly with the liability of the third-party carrier (transit service provider) for charges billed by the terminating carrier in a transiting context and the appropriate rates to be charged in the transiting context, the decisions make several other things clear with respect to transiting arrangements. First, these decisions make clear that the originating carrier is responsible for transiting costs. Second, these decisions make clear that

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[16] *In the Matter of Petition of WorldCom, Inc., et al., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration,* Memorandum Opinion and Order, 17 FCC Rcd 27039 (2002) ("*FCC Virginia Arbitration Order*").

[17] *Id.* at 27305 ¶ 544 (footnote omitted).

[18] *Id.* at 27101 ¶ 117 (approving non-TELRIC rates and stating "we decline, on delegated authority, to determine for the first time that Verizon has a section 251(c)(2) duty to provide transit service at TELRIC rates … any duty Verizon may have under section 251(a)(1) of the Act to provide transit service would not require that service to be priced at TELRIC.") (footnote omitted), *and see id.* at 27100 ¶ 115.

carriers should be free to negotiate market-based arrangements for transiting services. Third, in the *FCC Virginia Arbitration Order*, the Bureau acknowledged, with respect to whether or not carriers had an obligation to provide transiting, that there is no "clear Commission precedent or rules declaring such a duty."[19] Finally, the *FCC Virginia Arbitration Order* addressed the issue of agreements. In that decision, the Bureau agreed with Verizon (the transit service provider) that AT&T (the terminating carrier) "must establish interconnection agreements with third-party LECs for traffic that transits Verizon's network and terminates to AT&T UNE-platform customers."[20]

Qwest's statements on transiting in its recent *ex parte* presentations follow from the legal authority described above. First, Qwest requested that the Commission clarify once again that transit service providers are not liable for terminating compensation payments under Section 251(b)(5) of the Act or tariff, respectively, because they provide neither local exchange nor

[19] *Id.* at 27101 ¶ 117; *see also In the Matter of Petition of Cavalier Telephone LLC Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Arbitration*, Memorandum Opinion and Order, 18 FCC Rcd 25887, 25908-09 ¶ 38 (2003) ("*Cavalier Order*") (Wireline Bureau found there was no Commission precedent or rule holding that Verizon has a duty to provide transiting under the Act and expressly declined to create such a ruling under its delegated authority); *In the Matter of Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in New Mexico, Oregon and South Dakota*, Memorandum Opinion and Order, 18 FCC Rcd 7325, 7376 note 305 (2003) ("*New Mexico, Oregon and South Dakota 271 Order*") ("Although we do not address the merits of AT&T's assertion that Commission rules require Qwest to provide transit service under section 251(c)(2), we note that the Commission has not had occasion to determine whether incumbent LECs have such a duty, and we find no clear Commission precedent or rules declaring such a duty.").

[20] *FCC Virginia Arbitration Order*, 17 FCC Rcd at 27303-04 ¶ 541. *See also, id.* at 27102 ¶ 119 (stating that Verizon alone should not have the burden as a transit service provider of negotiating interconnection and reciprocal compensation arrangements with third-party carriers but that this burden is shared by "all local exchange carriers.").

exchange access services and, in fact, do not even provide a common carrier service. It is essential that the Commission state firmly and unequivocally that a transit carrier (*i.e.*, a carrier that does not provide the service to or bill the caller) is not responsible under any circumstance for payment of compensation to the terminating carrier. For example, the Commission should clarify that it is contrary to the Act to enforce any tariff against a transit service provider, even if the tariff purports to apply by its terms to the transit carrier. Any risk that a transit carrier would be subject to payment of termination costs pursuant to tariff or some of the state common law theories (*e.g.*, unjust enrichment) pursued by terminating LECs would cause prudent carriers to cease offering transit service, or set the rates for transit service to cover this risk, including the enormous litigation costs generated by the numerous federal court complaints filed by terminating LECs against transit carriers.

The two other key Qwest requests regarding transiting in its recent *ex parte* presentation follow necessarily from the demonstration, above, that transiting is an interconnection service subject to Sections 201 and 202 and the market should establish transiting terms and rates. Qwest requested that the Commission clarify that intermediate carriers have no mandatory obligation to provide EMI records or other call records to terminating carriers in the absence of an agreement (though it would be an unreasonable practice to refuse a request to negotiate an agreement for such records).[21] Qwest also requested that the Commission clarify that, in the

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[21] *See also, id.*, at 27102 ¶ 119 (rejecting a WorldCom proposal that would have required Verizon to act as a billing intermediary between WorldCom and third-party carriers when they exchange traffic that transits Verizon's network; finding no "clear precedent or Commission rule requiring Verizon to perform such a function").

event a transit service provider does generate EMI records or similar call record information, it must be able to obtain remuneration for that service.

Third, Qwest was asked to clarify why the best solution to the LNP-query issue addressed in its *ex parte* meetings was not simply to allow for the end office to do the query and simply charge the N-1 carrier given how few numbers are ported under current tariffs.

As an initial matter, Qwest believes that this question frames the issue incorrectly. A call from or to another carrier is determined to require an LNP database query when the six-digit NPA NXX that was dialed includes to any extent a ported or pooled number. Thus, this requires a database query each time the NPA-NXX is dialed regardless of whether the line number is a ported telephone number. Therefore, the cost of an LNP database query would be substantially the same for IXCs or originating carriers as it would for the carrier that performs the "default" LNP database query.[22] Also, in the scenario where the default query is performed at the end office that now must forward the call, the carrier performing that default query must use additional switching and/or facilities to accomplish call completion -- thereby incurring other additional costs when the query is not performed as the Commission's current rules require.[23] Additional cost is also often incurred in this scenario by both the carrier that performs the default LNP database query and the terminating LEC because there is often confusion as to the

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[22] In data taken from LERG 6 on March 6, 2006, of the LERG's 363,693 NPA-NXXs, 113,925 are marked as portable and 45,507 are marked as pooled.

[23] When an IXC delivers traffic to a Qwest end office without performing the LNP query then the Qwest end office will perform the LNP query. In the instances where the LNP query returns another carrier's LRN, the switch looks for the routing path associated with the LRN. In some cases this is a tandem trunk group. The traffic would then route through the tandem and then on to the terminating switch. This uses additional network resources for the termination of traffic that would not be needed if the query had been done by the IXC.

jurisdiction of the traffic exchange that results from the default LNP database query. Finally, phantom traffic is generated when default LNP query end-office routing is used to route jointly provided switched access traffic to other LECs over facilities that are typically used only for local traffic. This is sometimes seen as phantom traffic because the terminating carrier perceives this traffic as traffic that complicates appropriate billing by the terminating carrier.[24]

The question posed to Qwest in its *ex parte* meetings also appears to rely upon incorrect assumptions in its statement that "few numbers are ported." A significant volume of traffic is destined to ported numbers and porting activity is growing. As of April 30, 2004, the volume of ported numbers had increased to approximately 34 million – representing a 25% increase in ported numbers since wireless number portability started.[25] In addition, NeuStar also reports increased porting activity.[26] Again, pooling also necessitates LNP queries. The current trends in both porting and pooling debunk any notion that they are infrequent such that it is somehow unfair to impose the query obligation on the IXC or originating carrier at the beginning of the call flow.

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[24] When an IXC delivers traffic to a Qwest end office without performing the LNP query then the Qwest end office will perform the LNP query. In the instances when the LNP query would return another carrier's LRN then the switch would look for the routing path associated with the LRN. In some cases this would be a local trunk group between the two LEC networks. Thus, the traffic would look to the CLEC/ICO as IXC traffic that is routing over a local trunking connection.

[25] *See* Table 14 of the "Numbering Resource Utilization in the United States As of December 31, 2004" by Craig Stroup and John Vu, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission August 2005.

[26] *See NeuStar, Inc. Releases Fourth Quarter and Full-Year 2005 Financial Results* http://neustar.biz/pressroom/files/announcements/pr020662006.nsrq4.pdf.

In short, Qwest encourages the Commission to not lose sight of the fact that default LNP query end-office routing creates network inefficiencies and, to some extent, phantom traffic. Qwest and US Telecom and others calling for this clarification merely seek a clarification of current law. This clarification would not impose any new obligations on IXCs or originating carriers, but would merely require them to faithfully perform their existing obligations.

Fourth and related to the third item addressed above, Qwest revises its suggestion in its prior *ex parte* presentation that the action requested by the US Telecom proposal and supported by Qwest regarding LNP queries would require a rule change. In its presentation, Qwest had stated that the Commission should make clear that the LNP query must be performed by the originating carrier for local traffic and by the originating IXC for non-local traffic, even if that carrier were not the N-1 carrier. Information since provided by US Telecom clarifies that US Telecom is not seeking a rule change but merely a clarification by the Commission that the N-1 carrier, which is *usually* the originating LEC for local traffic and the originating IXC for non-local traffic, is obligated to perform the required query. Qwest supports this requested clarification and, in order that the Commission's clarification be as precise as possible, Qwest requests that the Commission include in the requested clarification a further clarification that the definition of who is the N-1 carrier in any given situation is that which is set forth in "Local Number Portability Administration Working Group (LNPA WG) Interpretation of N-1 Carrier Architecture, Version 5," submitted by the North American Numbering Council to the Commission's Office of the Secretary on January 17, 2005.

A Commission clarification of the definition of the N-1 carrier and the responsibilities of the N-1 carrier as described above will help stem the growth of phantom traffic and inefficient network use.

Fifth, Qwest was asked to address how the LERG controls the routing of a local and interexchange calls. Again, Qwest stated in its *ex parte* presentation that it agrees with US Telecom that the Commission should clarify that carriers must route traffic on the PSTN according to the LERG where permitted with its network technology deployed at the time the call was originated. Qwest noted that US Telecom had included the language "[e]xcept by written agreement or tariff…" in the LERG part of its proposal. In connection with that "exception" language in US Telecom's proposal, Qwest stated that that language was not adequate to reflect the fact that the LERG need only be followed if a carrier indirectly connects to the terminating carrier's end office. Qwest asked the Commission to clarify this fact. Qwest now further states that, while the LERG was initially designed to facilitate the proper routing of interLATA interexchange calls, it has evolved such that it can and is used for routing intraLATA calls including local calls. The LERG provides the instructions for how local calls and interexchange calls can and should be routed. The LERG contains information associated with the functionality of the local carrier's switching elements that enable the origination and termination of local and interexchange calls. Switching functionality information provides interexchange carriers and other local carriers (*e.g.*, ILECs, CLECs and CMRS providers) with the subtending end offices of particular tandem switches. This information facilitates a sending carrier's ability to establish primary as well as alternate routing arrangements to the end office serving the called party. The LERG is the industry's foundational tool for routing calls and providing information such as LATA assignment, rate center information, number porting and number pooling information. However, there is one important caveat for the LERG. The LERG is only as accurate as the information supplied. Carriers must keep the information in the LERG current so that all other carriers may respond by maintaining updated information within each respective carrier's network.

Sixth, and related to the fifth item addressed above, Qwest disagrees with the comments of OPASTCO to the extent they suggest that carriers must use a CEA architecture for delivery of traffic to end offices that subtend CEA tandems.[27] The Commission should not establish LERG requirements such that they would force delivery of calls to networks such as CEA networks for the sole purpose of sustaining those architectures through intercarrier compensation. The LERG should not be allowed to be used by a terminating carrier to force other carriers to route traffic in such a way as to cause that other carrier to incur more costs by routing their calls through other carrier networks, *i.e.*, the Commission should expressly affirm that the originating carrier has the right to directly connect to the terminating carrier to terminate their traffic if they so choose.

Finally, Qwest was asked to describe how many ILECs, of those that Qwest connects with in its region, have no out-of-band signaling capability. Qwest is only able to answer this question somewhat indirectly as follows. 6.5% of the total trunk groups between Qwest and all other carriers and 7% of the total trunk groups between Qwest and other ILECs, respectively, are in-band signaling trunk groups.

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[27] *See ex parte*, dated Feb. 8, 2006, CC Docket No. 01-92, letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Stuart Polikoff, OPASTCO.

If you have any questions, please contact us. This filing is being made electronically via ECFS pursuant to Commission rule 47 C.F.R. § 1.49(f).

Very truly yours,

/s/ Timothy M. Boucher

cc: via e-mail
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Ms. Michelle Carey
Mr. Ian Dillner
Ms. Jessica Rosenworcel
Ms. Tamara Preiss
Ms. Victoria Goldberg
Mr. Steve Morris
Mr. Don Stockdale
Mr. Jay Atkinson
Mr. Randy Clarke
Mr. Christopher Barnekov
Mr. Peter Trachtenberg
Ms. Nese Guendelsberger
Mr. Paul Murray